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C O N F I D E N T I A L SECTION 01 OF 05 COLOMBO 000093

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DEPARTMENT FOR SCA/INS

E.O. 12958: DECL: 01/24/2018

TAGS: PGOV PREL PHUM KDEM CE

SUBJECT: SRI LANKA: GOVERNMENT UNVEILS PROPOSAL FOR FIRST STEPS ON DEVOLUTION

REF: A) COLOMBO 81 B) COLOMBO 57 (AND PREVIOUS)

Classified By: CLASSIFIED BY DCM JAMES R. MOORE. REASONS: 1.4(b,d).

¶1. (C) SUMMARY: The All-Party Representative Committee (APRC) complied with a Presidential instruction to produce a devolution plan based on full implementation of the 1988 13th Amendment to Sri Lanka's Constitution. In effect, it submitted to the President a draft reportedly dictated largely by Presidential advisors. The plan calls for holding elections to an Eastern Provincial Council as soon as possible and the setting up of an Interim Council for the Northern Province (note: still largely under LTTE control). It is not specific on the powers to be exercised by the provinces or the financial resources the provinces will receive to carry out their responsibilities. It calls for full recognition of language rights spelled out in Chapter IV of the Constitution, and for the recruitment of Tamil-speaking policemen and provision of interpreters so that Tamil speakers (including most Sri Lankan Muslims) will be able to transact government business in their own language. In briefings to Co-Chair Ambassadors and other foreign diplomats, the Foreign Minister emphasized that the government did not intend these proposals as a means of meeting LTTE demands, but was attempting to address the aspirations of the people of the North and East (i.e., Tamils and Muslims). Whether the package is sufficiently robust to make a useful contribution to national reconciliation and establishing the "political track" that has thus far been lacking will depend in large part on how it is received by moderate Tamils and Muslims, the principal opposition party, and civil society. End summary.

FOREIGN MINISTER BRIEFS CO-CHAIRS...

¶2. (C) DCM (representing Ambassador) attended a briefing by Foreign Minister Bogollagama late on January 23 for Co-Chair representatives on the APRC plan for implementing the 13th Amendment to the Sri Lankan Constitution, which the President had received the same day. Bogollagama first met separately

with Indian High Commissioner Alok Prasad in his office. Foreign Secretary Palitha Kohona and a number of other MFA officials also attended the subsequent meeting with Co-Chair Ambassadors in the MFA conference room.

¶3. (C) The Foreign Minister called the APRC proposal the first phase in the devolution process. He said consensus was achieved among all parties in the APRC on the proposal that was presented to the President. The goal, he said, was sustainable peace. He said that military operations cannot replace political measures, but emphasized that the President believes it is necessary to meet the threat of terrorism through military engagement. Bogollagama stressed that in pursuing full implementation of the 13th amendment the president was taking a pragmatic course to do what is achievable (an implicit reference to the current strained domestic political environment).

¶4. (C) Bogollagama explained that the proposal calls for:
-- devolution of power and distribution of resources to the provincial councils
-- elections to be held immediately in the East
-- an interim council to be appointed to the North until such time as it is feasible to hold elections there
-- full implementation of the existing constitutional amendment establishing Sinhala and Tamil as the official languages
-- recruitment of Tamil speakers for the police force in the East and North and Tamil language training for police officers.

¶5. (C) Foreign Secretary Kohona noted that all members of
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the APRC subscribed to the outcome. EPDP head Douglas Devananda, he said, called the document a catalyst for future devolution measures. He assured the Co-Chair representatives that the APRC will continue to meet and added that the executive government would not impose its will on the country.

... AND HAILS PRESIDENT'S PRAGMATIC LEADERSHIP

¶6. (C) Pol Chief attended a briefing on January 24 for the diplomatic corps on the proposal, at which copies of the plan were distributed (See para 10 for full text). Bogollagama, reading a prepared speech, hailed the "pragmatic leadership of President Rajapaksa" and the "untiring efforts of the Chairman of the APRC Minister Tissa Vitharana in building consensus..." The Foreign Minister cited a commitment by President Rajapaksa to take legal and administrative measures for the implementation of the proposals as soon as possible. He noted that the President "emphasized that political issues required political solutions, while terrorism required a different response." The President "called upon all political parties not to seek narrow political gains and to join in addressing the remaining issues in a spirit of reconciliation and cooperation."

¶7. (C) Bogollagama observed that "... after 20 years the present formulation will see the letter and spirit of the Indo-Sri Lankan Agreement of 1987 being fully implemented in the areas it was most intended to serve." However, he emphasized that "these are not proposals aimed at meeting the demands of the LTTE terrorists, but to meet the aspirations of the long suffering people of the North and the East... These are implementable steps in a continuing process for great devolution of power, with the objective of achieving a final and durable political settlement acceptable to all communities."

GOVERNMENT DILUTES APRC'S DRAFT

¶8. (C) The government's lofty rhetoric aside, however, there are a number of indications that the document that finally

emerged was virtually dictated by a few close Presidential advisors with relatively little input from the APRC. Dr. K. Vigneswaran (protect), a moderate Tamil who has been one of the main behind-the-scenes drafters for the APRC, sent us several iterations of the proposals for implementing the 13th Amendment that the APRC had worked on since January 20. The original proposal ran to nine pages and was a detailed blueprint for how to devolve power within the existing Constitution, including recommendations for provincial and local government structures and their relationship to the central government. It contained specific suggestions for securing the financial arrangements that would allow the provincial and local governments to carry out their mandates.

There were safeguards against the central government overriding the Provincial Councils through "national policy" legislation that have historically pre-empted areas nominally reserved for the provincial governments. The successive drafts with changes demanded by the President's staff progressively diluted these concepts, with the final paper, just two and half pages long, amounting to little more than a general statement of intentions and principles.

¶9. (C) Obtaining the consensus of the parties participating in the APRC also reportedly involved the use of some tried-and true, but nevertheless questionable tactics. A member of one of the parties representing "Up-Country Tamils" contacted Pol before the final product was unveiled to complain of extreme coercion used to obtain the party's support. The leader of the party, he reported, was branded a "traitor" for resisting the plan and warned that revenge would be taken against him if he did not fall into line.

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¶10. (U) The text of the final proposal follows:

(begin APRC paper on implementation of 13th Amendment - note internal numbering)

Action to be taken by the President to fully implement Relevant Provisions of the present Constitution as a prelude to the APRC Proposals

¶11. Introduction

1.1 The APRC was mandated by the President to prepare a set of proposals that would be the basis for a solution to the national question. After 63 sittings over a period of 1-1/2 years the consensus document is being finalized and it should be possible to hand it over to the President in the very near future. The outcome would be a basis for appropriate constitutional arrangements. Implementation of this would of course require amendment of the present Constitution, and in respect of some Articles, approval by the People at a referendum. This would of course take time, once a favorable climate is established.

1.2 Under the circumstances, the APRC taking into consideration its own proposals, has identified a course of action to achieve maximum and effective devolution of powers to the provinces in the short term. The emphasis would be on meeting the aspirations of the Tamil speaking peoples, especially in the North and East. This would be done within the framework of the present Constitution, that is, the 1978 Constitution. The course of action proposed by the APRC would be implementable with immediate effect, and envisages an interim arrangement pending the restoration of democratically elected Provincial Councils in the North and East.

1.3 The 13th Amendment to the 1978 Constitution was enacted following the Indo Sri Lanka Agreement of July 1987. It resulted in the setting up Provincial Councils throughout Sri Lanka and it devolved power to the Provinces under the unitary Constitution. The powers devolved fall under a Provincial List and a Concurrent List. All other powers were reserved for the Centre through a Reserved List. Further, any

subject or function not included in any of the three Lists will also be deemed to be a subject or function in the Reserved List.

1.4 Implementation of subjects and functions devolved on the Provinces through the Concurrent List has not taken place at all due to the fact most of these subjects and functions were retained by the Centre as if they also belonged to the Reserved List.

12. Steps necessary to permit Maximum Devolution of Powers to Provinces under the 13th Amendment

2.1 The Government should endeavor to implement the 13th Amendment to the Constitution in respect of legislative, executive and administrative powers, overcoming existing shortcomings.

2.2 Adequate funds should be provided by the Government to facilitate effective functioning of the Provincial Councils.

2.2.1 The Centre should hereinafter route all finances in respect of special projects undertaken by the Centre in the Provinces, if they are on subjects under the purview of the Provinces, through the respective Provincial Administrations.

13. Special Arrangements necessary to permit Maximum Devolution of Powers to the Northern and Eastern Provinces under the 13th Amendment

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3.1 The APRC is of the view that conditions in the Eastern Province are conducive to holding elections to the Provincial Council and that elections should be held immediately.

3.2 Conditions in the Northern Province are far from being peaceful. A free and fair election in the North will not be possible in the near future. Hence an alternative arrangement is required in the Northern Province to enable the people of that Province to enjoy the fruits of devolution.

3.3 As it is not possible to hold elections in the North, the President could make appropriate order to establish an Interim Council for the Northern Province in terms of the Constitution.

3.4 The Interim Council of a Province will aid and advise the Governor in the exercise of his executive powers, and will function until Provincial Council elections are held in that Province.

3.4.1 The Interim Council should reflect the ethnic character of that Province.

3.4.2 It is proposed that the Interim Council for a Province should consist of individuals who have political experience and an abiding interest in the development of the Province and in its people and be acceptable to the people of the Province. A person to qualify for appointment as a member of an Interim Council should have a thorough knowledge of the particular Province.

14. Implementation of the Official Languages Provision of the Constitution

4.1 The Government should take immediate steps to ensure that Parliament enacts laws to provide for the full implementation of Chapter IV of the Constitution on Language.

4.2 There are many contexts in which remedial measures will assume an administrative, rather than a legislative, character.

The following are instances of measures which will be strenuously accelerated and implemented by the Government:

(a) recruitment of Tamil police officers in sufficient numbers to enable Tamil speaking members of the public, not only in the North and East, but in the country as a whole, to transact business in their own language in police stations;

(b) the taking of all steps, including recruitment of staff and procurement of equipment to enable Tamil speaking members of the public to deal with Ministries, Government Departments, statutory corporations and all other public bodies in their own language;

(c) The regular holding of, and streamlining of procedures for, mobile "clinics" where officials fluent in the Tamil language will engage in problem solving on the spot;

(d) the provision of interpreters and other relevant facilities in all courts of law, so that the needs of members of provincial minority communities are catered fully with regard to all aspects of the administration of justice;

(e) The Sinhala minorities in the North and East suffer from disadvantages similar to those affecting Tamil speaking peoples as mentioned above. Suitable steps should be taken to address them along the same lines.

(end paper)

¶11. (C) COMMENT: APRC Chair Vitharana had to abandon his

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goal of presenting simultaneously with the present paper a more ambitious draft that would require constitutional amendment. It is not clear how long this process will continue, but progress toward a more ambitious plan will likely take quite some time. Post would nevertheless welcome any measures, however modest, that contribute to a sense of forward momentum and could begin to bridge the divide between the communities. It is essential that Sri Lanka's minorities be given a stake in the united country, a sense that their views matter -- and assurance that they may be able, in the foreseeable future, to exercise a modicum of autonomy in administering their own affairs in the areas where they predominate. Less important than whether we and other friends of Sri Lanka (with the possible exception of India, at whom much of the proposal seems directed) assess this document to be a viable step toward implementing devolution is whether Sri Lankans decide that the limited measures envisaged by the President are a sufficient down payment on power-sharing to be able to help begin the process of stabilization and national reconciliation. While the political parties in the APRC may well have been subjected to significant pressure to conform to the President's ideas, there remain independent voices - the principal opposition UNP, the critical media, and civil society organizations - who will, in the coming days, evaluate the proposal that did emerge. It will soon become apparent whether Tamils and Muslims recognize in the document a genuine effort to address their aspirations. Embassy will report these reactions and provide further analysis of the state of play on devolution.
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